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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,195	08/08/2001	Shuichi Naito	M2173-1	1077
7278	7590	10/11/2005	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			TSAI, SHENG JEN	
			ART UNIT	PAPER NUMBER
			2186	
DATE MAILED: 10/11/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

*Ku*

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

09/924,195

**Applicant(s)**

NAITO, SHUICHI

**Examiner**

Sheng-Jen Tsai

**Art Unit**

2186

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 23 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: 3, 4, 10, 12, 13, 15, 17 and 19.
- Claim(s) withdrawn from consideration: 1, 2, 5-9, 11, 14, 16, 18 and 20.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see below.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

Applicant has combined and rearranged the claims in the following way:

Currently amended claim 3 consists of all the limitations recited in the previously presented claims 2 and 3,  
Currently amended claim 10 consists of all the limitations recited in the previously presented claims 9 and 10,  
Currently amended claim 12 consists of all the limitations recited in the previously presented claims 11 and 12,  
Currently amended claim 15 consists of all the limitations recited in the previously presented claims 14 and 15,  
Currently amended claim 17 consists of all the limitations recited in the previously presented claims 16 and 17,  
Currently amended claim 19 consists of all the limitations recited in the previously presented claims 18 and 19,  
Claims 1-2, 6-9, 11, 14, 16, 18 and 20 have been cancelled in response to the last Office Action.  
Claim 5 has been cancelled previously in response to the first Office Action.

Since all limitations of the currently amended claims are recited previously and since these limitations have been analyzed and addressed in the previous Office Action, another round of claim analysis is not needed. Please refer to the previous Office Action regarding the explanation of the claim analysis.

Applicant contends that Funakoshi fails to teach writing a program on an onboard electronic control apparatus at a factory while bypassing the standard delay time of 10 seconds. However, the claim analysis presented in the previous Office Action is under 35 U.S.C. 103(a) as being unpatentable over Komori (US 6,490,663) and in view of Funakoshi (European Patent Application EP 0 903 271 A2), and Komori teaches an onboard electronic apparatus for controlling a vehicle engine (figure 1) by writing and rewriting a nonvolatile memory storing application programs.

As to bypassing the standard delay time of 10 seconds or more, it is noted that a decision (to bypass or not to bypass) made based on a "timeout" is a common and widely adopted practice in the art; that Funakoshi teaches using a "free run timer" to measure a time period from the IG power on time to determine the subsequent operations, that the delay time of 10 seconds or more is defined by a standard well known to the automobile electronics industry to which the inventions disclosed by Komori and Funakoshi belong to. Thus it lacks patentable significance.

Therefore, the examiner's position regarding the patentability of the claims (3,4,10,12,13,15,17 and 19) remains the same as stated in the previous Office Action.



**PIERRE BATAILLE**  
**PRIMARY EXAMINER**

10/04/05